

**APPLICANTS:**

Roosevelt, Deborah and Tracey Beale

**REQUEST:** A special exception pursuant to Section 267-53F(8) of the Harford County Code to allow a Personal Care Boarding Home in the Agricultural District

**HEARING DATE:** November 29, 2004

**BEFORE THE**

**ZONING HEARING EXAMINER**

**FOR HARFORD COUNTY**

**BOARD OF APPEALS**

**Case No. 5435**

**ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Roosevelt, Deborah and Tracey Beale

**LOCATION:** 205 Glenville Road - Joel's Knoll subdivision, Churchville  
Tax Map: 42 / Grid: 2F / Parcel: 292 / Lot: 1  
Third Election District

**ZONING:** AG / Agricultural

**REQUEST:** A special exception pursuant to Section 267-53F(8) of the Harford County Code to allow a Personal Care Boarding Home in an Agricultural District.

**TESTIMONY AND EVIDENCE OF RECORD:**

Deborah Beale, Co-Applicant, testified that she and her husband have owned 205 Glenville Road, the subject matter of this application, for a little over one year. They are requesting a special exception for a Personal Care Boarding Home.

Mrs. Beale has been personally involved in the personal care boarding home business since 1995. She currently has six (6) individuals in her care and residing at the subject property.

Mrs. Beale stated that she needs a license from the Maryland Department of Health and Mental Hygiene in order to operate a licensed personal care boarding home at the subject property. She states that she has been issued a provisional license, but the Department of Health and Mental Hygiene had been unable to deliver it to her.

Mrs. Beale herself holds three (3) licenses: 1) Adult Personal Care License; 2) Personal Care License; and 3) Assisted Living License. According to the Applicant the Department of Health and Mental Hygiene will inspect the subject property for compliance with its regulations, including those relating to environmental issues. Furthermore, as a condition of State approval, the Fire Marshall must inspect the subject property. The Applicant stated that the Fire Marshall conducted this inspection a week before the hearing.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

According to Mrs. Beale the Department of Health and Mental Hygiene will determine the level of care that can be provided at the subject property. Level One involves care of residents who for the most part are able to perform every day tasks, but may need help with medications. Level Two individuals are those residents who can for the most part perform every day tasks, but may need help with bathing. Level Three individuals are residents who would need assistance with most of their daily activities.

Mrs. Beale states that at the present time the subject property is home to six (6) residents who are in need of assistance. Of these, three (3) individuals require Level Two care; two (2) individuals require Level Three care; and one (1) individual requires Level One care. The residents are aged from 53 to 86 years old.

Mrs. Beale described the subject property as being a corner lot. The house is a ranch style home, with a patio in back. The property is bordered by Maryland Route 155, which is somewhat screened by an existing hedge row. The rear yard of the property contains shrubbery. The house backs up to a pond which subsequent testimony revealed is owned and maintained by the Level Volunteer Fire Company. The house fronts on Level Road, and the subject property has some vegetative screening along Level Road.

Accordingly to Mrs. Beale, Level Three individuals will use the back porch in order to take the sun and air. Level Two individuals will also use the back porch. Level One individuals, (those who, for the most part, are able to perform all everyday tasks), will go outdoors daily. Mrs. Beale indicated that none of the residents spend a significant amount of time outdoors. Level Three and Level Two individuals will, usually, remain on the back porch.

The staff of the proposed personal care boarding home will consist of one full-time assistant who will function as the cook, who will shop, and who will generally assist the residents; Lisa Stanford, who will act as an aid; Deborah Beale; Roosevelt Beale; and Tracey Beale. There will always be at least one individual on-site.

The facility must be equipped with sprinklers and will regularly be inspected by the Fire Marshall. Mrs. Beale will have a visiting nurse on call and who will periodically come to the facility.

On cross-examination Mrs. Beale indicated that she has been in a similar business since 1995, previously having a personal care boarding facility located at 2035 Wetherhorn Drive, Bel Air, Maryland, which was a split-level single family home. She is, accordingly, familiar with the pertinent licensing requirements. Mrs. Beale reiterated that she has a provisional license, which had not yet been actually delivered to her. She herself has an individual personal care license as well as an adult personal care license and assisted living license.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

As of February 2004, according to Mrs. Beale, the State of Maryland had determined that all similar facilities are to be considered assisted living facilities. In 2003, when she first began operating an assisted living facility from the subject property, she had three (3) residents. She had her personal, individual licenses, but the facility itself was not licensed. The facility is not yet sprinklered, although she plans to do so. A bathroom has been added which extends somewhat out into the attached garage, but otherwise there has been no structural changes to the dwelling on the subject property.

The dwelling has six (6) bedrooms. The residents will live two (2) to a room. The family room has been converted to a bedroom, as has the sunroom. Mrs. Beale, her husband, and their daughter will continue to live on the subject property. Other staff members will be present on a daily basis, but will not live in the property. As Mrs. Beale is asking for permission to care for a total of eight (8) individuals, there will be, accordingly, a maximum total of eleven (11) individuals residing in the property.

The Applicant consulted with the Harford County Department of Planning and Zoning before she purchased and moved into the subject property, and was told that it would be a good location for such a facility. According to Mrs. Beale, at the time she purchased the subject property no license was necessary. She had her individual license which, in her opinion, was the only license then necessary. The three (3) individuals who moved into the subject property with her had been with her for some time, having been residents of the Wetherhorn Place personal care boarding home. The residents usually have family members visit at least once a week. Family members are not required to call before visiting. They can visit any time during normal hours.

Mrs. Beale indicated that her visiting nurse was a registered nurse.

The subject property has been inspected by the Department of Health and Mental Hygiene on three (3) different occasions, according to the Applicant. An inspection on September 7, 2004 was a result of complaints about trash. The inspector found, in her report, that Mrs. Beale was deficient in the handling of the trash; she had no smoke detectors in the bedrooms; and medication training was deficient. This inspection also stated that Mrs. Beale had no properly issued license.

A copy of the Department of Health and Mental Hygiene's inspection report was presented to Mrs. Beale. She indicated she was familiar with the report. According to Mrs. Beale, she did not need a designated assisted living manager in September, at the time of the report, as the property was not at that time a licensed personal care boarding home. Mrs. Beale indicated that the smoke detectors have since been installed. Mrs. Beale indicated that sufficient parking existed on site. Visitors would be able to park on the paved area along side the garage. Sufficient parking is available for both visitors and staff.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

The Applicant testified that immediately after purchasing the property in June 2003 she moved into the home along with three (3) residents for whom she had been caring. Three (3) additional residents came between January and October 2004. There has been no change to the exterior of the dwelling, nor are there plans to construct an addition or additional landscaping.

Mrs. Beale, upon cross-examination, testified the State of Maryland had made inquiries about the background of her patients.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated that the Department had reviewed the request and determined that the Applicant can meet or exceed all applicable requirements. The property meets the minimum lot size. The property is improved by a garage, parking and circular drive and, accordingly, adequate parking is contained on the site. A site plan will be reviewed by the Development Advisory Committee prior to the issuance of any permit.

In the Department's opinion the use will not adversely impact the neighborhood. The use will have no greater impact at this location than would any similar facility in the agricultural district. The use, furthermore, will not generate significant traffic, and should not have an impact on existing traffic.

Directly across the subject property exists a large barn-type structure. To the north of the property are located several single family, improved residential lots of similar size to, if not larger than, the subject property. To the rear of the property is located a pond. According to Mr. McClune, the site contains a substantial amount of vegetation. The subject property would appear to be a single family home to outward appearances.

According to Mr. McClune, the sight distances along Glenville Road are adequate. The back of the house, which contains a patio area, can be seen from Maryland Route 155. The pond, also located to the rear of the house, is at a lower elevation than the back yard of the house. Mr. McClune further stated that a special exception was necessary when Mrs. Beale moved into the home in June 2003 to begin her personal care boarding home business.

In opposition to the request next testified Jared Welsh, who resides at 215 Glenville Road, next door to the subject property on its northern side. Mr. Welsh is a member of the Concerned Citizens of Churchville, a group of residents who are concerned about development in their area. The purpose of the group is to protect the community. Approximately thirty (30) families are members. Concerned Citizens of Churchville has formulated a position concerning the request. The group is unanimously opposed to the requested special exception.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

Mr. Welsh has lived on his property for about thirteen (13) years. He described the area as being open and rural and very attractive. A designated historic district is adjacent to his property. There are no commercial uses in the area, except for agricultural.

Shortly after purchasing the subject property, the Applicants began a substantial amount of construction activity. Mr. Welsh did not know that the subject property was being used as a personal care boarding home until August of this year when Mr. Beale notified Mr. Welsh of the existence of the special exception request. Mr. Welsh stated that the only change visible to the house was the construction of interior walls in the garage.

Mr. Welsh has checked with Harford County and was told that licenses are necessary in order to operate this use from the property. No license has yet been issued for this use. Mr. Welsh sent at least two letters to the Department of Planning and Zoning complaining of the use. Those letters, dated August 24, 2004 and August 23, 2004 were offered, but not accepted, into evidence. Specifically, Mr. Welsh testified about potential medical waste being disposed of from the property, and that the intersection of MD Route 155 and Glenville Road is dangerous.

A pond is located to the rear of the property at slightly lower elevation. Mr. Welsh is also concerned about trash being placed out on the road for up to three (3) days in advance of pick up. Trash scatters and it is unsightly.

The witness believes the use to not be compatible with the neighborhood. The adjoining intersection is dangerous. The use is a commercial use in a residential neighborhood. The use is not compatible with this agricultural area. The witness has also noticed an increase in vehicular traffic since the Applicants purchased the subject property. Mr. Welsh believes the impact at the proposed location is greater than at other areas within the agricultural district because the use is a commercial enterprise, located next to a recreation area, and close by an historic district.

Upon cross-examination, Mr. Welsh testified that he was worried about animals getting into the trash, if left out in advance of pick-up dates or not properly secured. He is also concerned about residents of the personal care boarding home wandering through the yard and potentially into the street. This would be a dangerous situation. Mr. Welsh has personal knowledge of accidents which had occurred on Glenville Road, specifically involving two telephone poles located across the road. The telephone poles, and a curve in the road, contribute to accidents in that location. This is evidence of a dangerous intersection, accordingly to Mr. Welsh. Mr. Welsh also feels that the pond would be a danger to the residents of the personal care boarding home. Those individuals could wander through the yard and into the pond.

Next in opposition testified Robert Tibbs, Jr. of 3545 Old Level Road, Havre de Grace, Maryland. Mr. Tibbs lives approximately one mile away from the subject property. Mr. Tibbs knows and has lived in the community for 64 years, for 29 years at his present location. Mr. Tibbs is on the Board of Directors for the Level Volunteer Fire Company.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

Mr. Tibbs believes the community is being placed in jeopardy by the proposed use. The residents of the proposed personal care boarding home would be free to wander around the area and in the area of the pond. Mr. Tibbs is fearful that one of these residents, particularly one in a wheel chair, would fall into the pond.

The pond is owned by the Level Volunteer Fire Company, and has been used by the fire company for over 50 years. It is approximately 14 feet deep in its center. The pond is utilized to fill the fire company's water trucks. Mr. Tibbs believes that process, which is noisy, would also tend to startle the residents of the personal care boarding home.

The witness testified that the area is very rural and agricultural. The use is out of keeping with the neighborhood. There are frequent accidents on Glenville and Level Roads, and particularly at the intersection of Glenville Road and Route 155. He also believes that the use will take away from the character of the area, and it is not necessary in this area.

Upon cross-examination Mr. Tibbs acknowledged that he had seen no change to the exterior of the building, although there are more cars parked there today than there were before the Applicants purchased the property. This also means that more trips also take place through the intersection.

Next in opposition testified Kim Little, who has resided at 331 Glenville Road, Churchville, Maryland for approximately 12 years. Ms. Little's property is located approximately one-quarter (1/4) mile away from the subject property. Ms. Little described the character of the neighborhood. She testified that an area designated as part of the National Register of Historic Places, which is called the Finney Houses Historic District, is located very close to the subject property, just down Glenville Road. This District contains a number of Finney Homes, and is a purely agricultural district. The district was identified on Protestant's Exhibit 5, which is a map of the area showing the location of the historic district in relationship to the subject property.

Ms. Little believes that the granting of the requested special exception would have an impact on the Historic District for the following reasons: the Finney family were very important figures in Churchville; the historic district is included in a neighborhood which includes the subject property; a commercial use should not intrude into this neighborhood; people have worked hard to preserve their neighborhood and they do not need this personal care boarding home in their neighborhood; the proposed special exception would negatively impact the community; the existing traffic is bad; as there have been accidents along Glenville Road, which is not designated for heavy traffic use; Ms. Little is very protective of the historic district and has worked to protect it; and she has observed more trash and waste at the subject property than prior to the Applicants' taking possession. Also accepted into evidence as Protestant's Exhibit No. 6 is a document indicating that the Little home is part of the Finney Houses Historic District. In Ms. Little's opinion the proposed use would cause an adverse impact on her property. The proposal is a misuse of land.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

Ms. Little pointed out that the Finney Houses Historic District is specifically mentioned in the Harford County Master Plan.

Upon cross-examination Ms. Little indicated that the subject property does not itself have historic significance. The historic district begins three-quarter to one mile way from the intersection of Glenville Road and MD Route 155. Ms. Little can see the intersection of Glenville Road and Route 155 from her bathroom window.

Also admitted into evidence was a copy of pertinent parts of the publication, Architectural History of Harford County.

Next in opposition testified Robert Marks, who resides at 426 Glenville Road, approximately one-half mile along Glenville Road from the subject property. Mr. Marks has resided on his property for almost seventeen (17) years.

People of Glenville Road have been vigilant in attempting to protect their area and have attempted to limit impacts, according to Mr. Marks. He believes the proper use of the area is single family residential and agricultural. There have been numerous accidents along Glenville Road, with traffic rates higher today than in the past. The proposed non-conforming use will affect Mr. Marks' property, in his opinion.

Next in opposition testified Leticia Galvez. Dr. Galvez indicated that she lives at 305 Glenville Road, the sixth house from the corner. Dr. Galvez is concerned about what she believes is medical waste being placed in the household trash coming from the property. This medical waste should not be mixed into the household trash. Ms. Galvez is concerned because the area is totally residential, and she is opposed to the request.

Next in opposition testified Patricia Hathaway of 316 Glenville Road. Ms. Hathaway has lived at her property since 1964, which is in the historic district.

Ms. Hathaway is very concerned about the use. She respects people who live in nursing homes, but is concerned about the condition of the home and the residents who will be living there. She questions who will be responsible for their supervision.

Ms. Hathaway also expressed concerns about the traffic on Glenville Road. People pay no attention to the speed limits and she is concerned about the safety of the residents of the proposed use who may wander into the roadway. The intersection of Glenville Road the Route 155 is dangerous. Furthermore, the subdivision within which the subject property is located (known as Joel's Noel), is zoned for residential use only.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

Next in opposition testified Chris Scarlato of 1108 Glenville Road. Mr. Scarlato lives approximately one mile away from the subject property, and has resided at his location for about three (3) years.

Mr. Scarlato has noticed an increased number of eighteen (18) wheel vehicles stopping at the subject property for deliveries. On at least one occasion one of these vehicles was forced to proceed down Glenville Road to turn around in a private driveway.

Mr. Scarlato also believes that the Applicants are not taking care of medical waste.

Mr. Scarlato has worked hard to take care of his property, and is concerned about the impact on his property from the proposed use. Traffic generated by the use is hazardous.

Next testified James Wollon, Jr. who resides at 600 Craigs Corner Road. Mr. Wollon stated that he does not live in the neighborhood. However, he is representing the Holy Trinity Church, which is located directly across Route 155 from the subject property. Mr. Wollon stated the Church congregation's opposition to any use of property which is contrary to the Harford County Zoning Rules and Regulations.

Roosevelt Beale, Co-Applicant, then testified that he has never had a tractor trailer delivery to his house. A tractor trailer could not physically make a delivery to his house.

Anthony McClune of the Harford County Department of Planning and Zoning then addressed issues which have been raised by the Protestants. Mr. McClune stated that the proposed special exception is considered a residential, not a commercial use, by Harford County Development Regulations. It will be a restricted use which must meet the requirements of the pertinent special exception. Mr. McClune does not believe that the use will have any impact on the historic district identified by the Protestants, nor does he believe it will establish an adverse precedent.

Addressing the pond, Mr. McClune stated that it is normally considered beneficial to residents of similar types of facilities to live along or adjacent to water. This contributes to a better living environment.

Adequate parking exists on site, according to Mr. McClune. Because there is a circular driveway in front of the home, there could be established a one way in, one way out configuration. Mr. McClune has seen no real traffic problems. The additional traffic to be generated by eight (8) residents would be considered at such time as the Applicants' made application for their driveway access permit. When Mr. McClune last inspected the property he observed four (4) cars in the driveway. This is no more than would normally be expected in such a home.



## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

### **APPLICABLE LAW:**

Section 267-51 of the Harford County Code defines Purpose as:

*“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”*

The Applicant is requesting a special exception to § 267-53F(8) of the Harford County Code which states:

- “(8) Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
- (a) The proposed use shall be located in a single-family detached dwelling.*
  - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
  - (c) A maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*
  - (d) Adequate off-street parking shall be provided.*
  - (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Testimony and evidence presented describe the subject property as being an approximately 4.93 acre improved lot which fronts on both Level Road (Maryland Route 155) and Glenville Road. The subject property is accessed off Glenville Road. To the east of the property is a slightly smaller parcel owned by the Level Volunteer Fire Company, on which is located a pond which the local fire department uses as water storage. The pond is also open to the public for recreational activities. Directly across Glenville Road is located a barn type building on a larger parcel of property. In a southwesterly direction across the intersection from the subject property is located Holy Trinity Church. Directly north of the property is a single family residence on a similarly sized parcel.

The predominant zoning classification of the area, including the subject property, is AG/Agricultural. Farther north along Glenville Road is located a National Historic District which is at least generically known as the Finney Houses Historic District. The Historic District, based upon an examination of Protestant's Exhibit No. 5, appears to begin approximately two-thirds (2/3) of a mile from the subject property.

The subject property itself is improved by a single family brick rancher with attached two car garage and a black-top, circular driveway and parking area in front of the garage and house. To the rear of the dwelling is a partially screened concrete patio. There exist mature trees along the border of the property along both roads and the northern side yard. Throughout the property are large mature trees. The property topography ranges from level to gently sloping downward toward the pond located on its easterly boarder. (See Staff Report).

The Applicants purchased the subject property in mid-2003. Mrs. Beale, prior to that, had run an adult personal care and/or assisted living facility in Bel Air. She has been in the business since 1995. Without a proper permit, Mrs. Beale upon purchasing the subject property began to utilize it as a personal care boarding home. She apparently moved at least some of the residents for whom she had been caring from her previous facility in Bel Air. At present she has six (6) individuals under her care. Mrs. Beale and her husband and their daughter also live in the home.

The Applicants propose a limit of eight (8) residents in their personal care boarding home, in addition to the Beale family who will continue to reside there. They plan no exterior change to the structure. A relatively slight modification has been made to an interior bathroom. No other changes are planned, and there will be no more than eight (8) residents being cared for at any one time.

None of the above findings were seriously disputed at the hearing.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

In reviewing any requested special exception one must consider the initial decision of the Legislative Body, in this instance the Harford County Council, which has legislatively determined that the proposed use is compatible for the district in which it is sought, provided certain conditions are met;

“It is not whether a special exception or conditional use is compatible with permitted uses that is relevant to the administrative proceeding. The legislative body, by designating a special exception, has deemed it to be generally compatible with other uses.”

See Eastern Outdoor Advertising Company v. Mayor and City Council of Baltimore, 128 Md. App. 294 (1999). See also Mossberg v. Montgomery County, 107 Md. App. 1 (1995).

Accordingly, compatibility has already been determined, and is not subject to review by the Board of Appeals, provided its specific standards are met. Those specific standards are set forth at Section 267-53F(8) and addressed as follows:

“(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

(a) *The proposed use shall be located in a single-family detached dwelling.*

The structure in which the proposed use will be located is a single-family detached dwelling.

(b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

The lot size is 4.93 acres, which exceeds the minimum lot size requirements for a conventional single-family residence in the agricultural district.

(c) *A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*

The Applicants’ propose a maximum of eight (8) boarders, which is significantly less than the maximum number of boarders which would otherwise be allowed in this property. (The maximum number of boarders allowed on the property is one (1) boarder per 2,000 square feet of area.)

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

*(d) Adequate off-street parking shall be provided.*

There is sufficient off-street parking. The parking area is paved to the front of the garage. A circular drive extends through the front yard. There was no question raised at the hearing that parking would not be adequate, and it is accordingly found that parking is adequate.

*(e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.*

This section is not applicable as the application is not for construction of a new dwelling. However, the dwelling, based upon the photos in the file and the description given during the hearing, would appear to be similar in appearance to other single family dwellings within Harford County, and in the Applicants' neighborhood.

The above findings were not seriously contested at the hearing, and no evidence was proffered, or even a suggestion made, that these specific requirements are not met. Accordingly, it is found that the requested special exception for a personal care boarding home, which has legislatively been determined to be compatible with the neighborhood, also is found to meet the specific requirements of Section 267-53F(8).

Of course, the analysis does not stop at this point. It is the potential impact upon the neighborhood of the proposed use which the Protestants most vehemently find to be offensive. The neighbors' objections can be summarized as follows:

- The proposed use is located on a dangerous County road. The use of the property as a personal care boarding home would tend to increase traffic on that road and would attract delivery trucks which would exacerbate this existing dangerous traffic condition.
- The change of use will impact the significance and integrity of the Historic District located just north of the subject property.
- The proposed use will create a situation in which the safety of residents may be threatened by the existence of the pond to the east of the property.
- Trash which will be generated by the use creates an unhealthy and unsightly situation.
- The use is not compatible with the rural-residential character of the surrounding area.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

The neighbors' concerns are perhaps best addressed by a review of Section 267-9I of the Development Regulations, Limitations, Guides and Standards which require an analysis not only of the generalized and specific objections raised by the neighbors, but other considerations as well. Those standards are set forth and addressed as follows:

### *Section 267-9I*

#### *(1) The number of persons living or working in the immediate area.*

The subject property and proposed use is located outside the Village of Churchville, in a relatively rural area of Harford County. The Department of Planning and Zoning suggests that the proposed use would provide a necessary service to citizens living in the area. While there is no particular evidence to support such a finding, clearly a well managed, clean and hospitable personal care boarding home helps meet general societal needs.

In any event, there is no indication that the number of persons living or working in this relatively rural area would be impacted in any way by the operation of the proposed personal care boarding home, or would in any way support a finding that the personal care boarding home should not be allowed. Furthermore, there is no evidence of any nature that the boarding home itself would have any measurable impact on the number of persons living or working in the immediate area.

#### *(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Pedestrian facilities are not an issue. The residents of the personal care boarding home would generally not be exiting the property except by vehicle. Pedestrians would have no reason to be walking to or from the property, given the rural-agricultural nature of the area.

The property is immediately to the right as one turns from Route 155 onto Glenville Road. Its driveway is adjacent to the intersection of those two roads. The property has a circular driveway. It is difficult to imagine how any traffic generated by the subject property would impact residents lying north of the subject property along Glenville Road. While there may be instances when visitors become disoriented and travel north on Glenville Road when they should be driving south to the intersection, those situations should be highly unusual and insignificant in number.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

The residents are concerned about delivery trucks either missing the turn into the subject property or having to proceed farther north on Glenville Road in order to turn around. However, delivery trucks are a common and every day feature of our environment, perhaps more so in rural areas of the County. Certainly, other residences along Glenville Road are, at least occasionally, serviced by delivery trucks. The remaining farms along Glenville Road are surely visited, occasionally, by both large and small commercial vehicles. The fact that some delivery trucks will on occasion visit the subject property, as they do other properties, cannot be grounds for denial. No evidence was presented that the impact of said vehicles would be worse at this location than somewhere else in the district.

The personal care boarding home will have eight (8) residents. Visitors will be allowed, according to the testimony of Mrs. Beale, during normal hours without prior appointments. Accordingly, it is likely that more traffic will be generated by the subject property with eight (8) boarders and the Beale family residing at that location, and with an associated staff member or two, than would be generated if the residence were occupied by a single family. However, that impact is not readily quantifiable. Given the fact that vehicles will, in almost all instances, not be traveling north on Glenville Road past the subject property, the impact on Glenville Road and on the existing traffic should be negligible. Accordingly, existing traffic conditions, and the impact on those existing traffic conditions by the proposed use, do not present any sort of realistic threat to the neighborhood.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

This use will have no identifiable impact on County or community growth. There is no foreseeable or identifiable negative fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The only such impact which has been identified is the apparent tendency of the Applicants to not properly take care of their trash, specifically by placing unsecured trash for private pick-up on the street either too far before or after scheduled pick-ups. As a result, the neighbors have identified this as an impact on the neighborhood. The neighbors also expressed concern about medical waste being deposited in the household trash cans. These are valid objections. However, they can be addressed by appropriate conditions and, accordingly, are not grounds for denial of this request. Those conditions are set forth below.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and Maryland State Police will provide police protection. Level Volunteer Fire Company will provide fire protection. Water and sewer facilities will be provided by an on-site well and septic system. A company of the Applicant's choice shall handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

As a special exception the use, as discussed above, has been legislatively determined to be generally compatible with the other uses allowable in this particular zoning district. The use is consistent with generally accepted planning principals and practices.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

There is one facility in the area which is open to public use and that is the pond owned by the Level Volunteer Fire Department directly to the east side of the property. A representative of the Level Volunteer Fire Department testified in opposition to the request. The main objections raised by that representative dealt with the safety of the residents of the proposed personal care boarding home. There was some concern raised that wheelchair bound boarders at the home would somehow roll down the sloping back yard of the subject property, or somehow lose their way over the lawn, and fall into the pond. It seems unlikely, at best, that such a scenario would ever develop. Indeed, if the subject property were used only as a single family residence, there is no guarantee that a wheelchair bound individual would not be faced with the same potential situation. In fact, the Department of Planning and Zoning considers the existence of the pond as a positive element. It would contribute to a better environment for residents by providing those individuals with an attractive visual aspect to the atmosphere surrounding the residence.

There appears to be no real impact on the pond if the proposed special exception were granted. The pond will remain available for water storage and use by the Level Volunteer Fire Department, which is its stated purpose.

Holy Trinity Church is also located in the immediately vicinity and is of a limited public nature. While a representative of the Church testified, there was no specific objection raised to the use, nor any specific impact on the use of the church identified as coming from the proposed special exception. It is found that there would be no impact on Holy Trinity Church which would in any way affect its continued use as a meeting place for its congregation.

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive natural features have been identified either on, adjacent to, or in the vicinity of the subject property. The only opportunity for recreation and/or open space in the vicinity is provided by the pond, discussed above. The use by the subject property as a personal care boarding home should have no impact on the ability of the public at large to continue to use the pond for fishing, ice skating, picnicking, etc. No suggestion has been made that any of those activities would be impacted by the proposed use. Any suggestion that the use of the pond by its owner or by the public would be affected by the adjacent personal care boarding home is not supported by any evidence of record and is rejected.

The potential threat and actual nuisance which trash from the personal care boarding home constitutes can be eliminated by the imposition of appropriate conditions. Those conditions are set forth below.

- (10) *The preservation of cultural and historic landmarks.*

While the Harford County Department of Planning and Zoning Staff Report indicated that this provision was not subject to this request, testimony during the hearing pointed out that a National Historic District lies just north of the property. That district contains various homes constructed by the Finney family, which had been given national historic register certification. A suggestion was made that the proposed use would impact the historic nature of those dwellings, and the purpose of the historic district itself.

However, the expressed concerns about the impact on the historic district rise to no more than generalized fears of impact, without specific evidence or articulated facts to support those fears. The proposed use would be conducted in a single family dwelling. Its appearance will not change. There will be up to eight (8) boarders present which will, obviously, be more than most single families contain. However to most, if not all, outward appearances there will be little change in the use of the property. The subject property is relatively isolated, being on the corner at an intersection of two roads. Traffic should not impact farther north into the historic district. There should be no odors, no sort of obnoxious fumes, noises or other similar impacts (other than possibly trash, which can be controlled by conditions).



## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

The neighbors articulated a speculative and generalized fear that somehow a new use to the neighborhood will adversely impact the existing neighborhood and district. Such an unspecific, generalized fear does not rise to the level of sufficient specificity to justify a denial of a proposed use. The continued existence, integrity, and nature of the existing historic district, which surely are worthy of respect and preservation, will not be jeopardized by the existence of the proposed use.

Accordingly, a review of the Limitations, Guides and Standards, as embodied in Section 267-9I show that the use will not create an adverse impact, and fully complies with all standards.

People’s Council of Baltimore County v. Mangione, 85 Md. App. 738 (1991), which involved a request for a special exception for a 240 bed nursing home, clearly defined the type of adverse impact finding which must be made in order to allow the denial of the special exception:

“Specifically, we shall review facts and circumstances upon which the Board could have found that the special exception use and the location proposed would cause an adverse affect upon adjoining and surrounding properties unique and different in kind or degree, than that inherently associated with such use regardless of its location within the zone . . . ”

Furthermore, the legislative body, in creating the special exception which is on review in this case, has already determined it to be generally compatible with other uses. It is not whether the special exception will have any adverse effects, as certain adverse effects are to be expected. After all, the use is a special exception, not a principal permitted use. It is whether the adverse effects in a particular location will be greater than the adverse effects normally associated with that particular use. See Eastern Outdoor Advertising Company v. Mayor and City Council, 128 Md. App. 294 (1999).

On the other hand, a denial of the requested special exception must be supported by evidence that the adverse effects from the proposed use would be greater at the proposed location than would generally be the case elsewhere within the zone. There must be reasons, stated of record, of how the proposed use would undermine the rural and historic character of the neighborhood, as defined by the neighbors. There must be evidence stated of record that would support a finding that the characteristics of the area would be diminished or changed in a harmful way. There is, however, no evidence to support such a conclusion. In truth, the objections of the neighbors do not rise above the level of ‘vague and generalized expressions of opinion which are lacking in probative value’. See Anderson v. Sawyer, 23 Md. App. 612 (1974).

## **Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

It is perhaps understandable that a neighborhood, particularly an established rural neighborhood, would fear the intrusion of any special exception, even one which is relatively benign as is the one requested in this case. The proposed use may have some impact. There may be more vehicles parked in front of the house than would exist if the house were simply used as a single family residence; there may be more deliveries by commercial delivery trucks. There will certainly be more trips to and from the property by staff, visiting nurses, and relatives. There may be increased household trash generated. However, all of these impacts would be associated with such a use regardless of where it is located. There is nothing about the proposed location which exacerbates any of these inherent impacts. Indeed, the impacts may be less because of the rural nature of the location, the relatively few single family residences within the vicinity, and its location immediately adjacent to a major intersection. While perhaps not an ideal location in all respects, it is in many ways preferable to many throughout Harford County, particularly those in more urban areas. In any event, that is not the standard which must be met. The standard of showing no increased impact at this location when compared to other locations in the district is one which is clearly met.

### **CONCLUSION:**

Accordingly, the requested special exception is approved, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved by the Development Advisory Committee.
2. The Applicants shall obtain all necessary permits and inspections for the use.
3. The Applicants are limited to eight (8) residents at this location.
4. At least one of the Applicants shall meet all necessary State Department of Health and Mental Hygiene personal licensing requirements.
5. The special exception is personal to the Applicants, and will terminate at such time as the personal care boarding home business terminates; the subject property is sold or otherwise transferred; or the State license to operate the personal care boarding home at this location is attempted to be transferred to any other individual.
6. All Federal and State Health Department requirements concerning the disposal of medical waste shall be strictly adhered to.

**Case No. 5435 – Roosevelt, Deborah & Tracey Beale**

7. All trash from the residence shall be disposed of by a commercial trash hauler, with an appropriate contract to be furnished to the Department of Planning and Zoning upon its request. Trash shall be placed for pick-up by the said commercial trash hauler no earlier than 7:00 p.m. the night before scheduled pick-up, and shall be secured in appropriate covered cans so as to prevent the dispersal of trash by animals or weather prior to pick-up. Trash containers shall be removed from the roadside immediately after pick-ups.
8. A post and rail fence, or of other similar design to be approved by the Department of Planning and Zoning, shall be erected by the Applicants along the property's back property line so as to create a reasonable impediment to any resident of the subject property from wandering onto the adjoining property of the Level Volunteer Fire Company.

Date: January 11, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner